Supreme Court, U.S.
FILED

No. 991189 JAN 18 2000

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

THERESSA RAINS JOHNSON,
Petitioner

V.

ANN W. ANDERSON,
Respondent

ON DIRECT PETITION FOR A
WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

THERESSA RAINS JOHNSON
810 Saint Francis Street
Brooksville, Florida 34601
(352) 796-2853
*Pro se of Record

35pp

QUESTION PRESENTED

Whether these Florida statutes, Fl. Prob. C. Ch. 733.613 and 733.614, violate the Fifth and Fourteenth amendments of the Constitution of the United States of America, because they deprive a person of real property to which she is entitled.

TABLE OF AUTHORITIES

Page

CASES:

Mo.-Moreland v. Paule, App., 659 S.W. 2d 609 5

State v. Turner, 224 So, 2d 290(1969) 7

CONSTITUTION AND STATUTES:

U.S. Const. art. VI 3

Fla. Prob. C. Ch. 733.613.....,6,7,8 2,4

Fla. Prob. C. Ch. 733.614 2,7

28 U.S.C. section 1254 (1988).....2

28 U.S.C. section 1257 (1988).....2

U.S. Const. Amend. V 3,4

U.S. Const. Amend. XIV..... 3,4,7,9

Fla. R. App. P. 9.330(d) 8

OTHER AUTHORITIES:

.....

Federal Freedom of Information Act 5

The Record on Appeal

In re Estate of McMillian, 603 So. 2d 685 (Fla. 1st DCA 1992)

Yaist v. United States v. Olson Florida Realty Co. No. 214-77 Cite 656 F. 2d 616 (1981)

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	ii
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT	3
REASONS FOR GRANTING THE WRIT	8
I.....	9
II.....	9
III.....	10
CONCLUSION	10

APPENDIX:

Opinion, circuit Court....1a - 7a

Opinion, fifth district court of appeal.....8a-16a

Motion for rehearing denied.....17a

Order of Supreme Court of Florida..... 18a - 19a

IN THE

Supreme Court of the United States

No. _____

THERESSA RAINS JOHNSON,
Petitioner,

v.

ANN W. ANDERSON,
Respondent.

---

petition for Writ of Certiorari to the Supreme Court of Florida

---

DIRECT PETITION FOR WRIT OF CERTIORARI

Theressa Rains Johnson respectfully petitions for a writ of certiorari to review the order of the Supreme Court of Florida, declining to accept jurisdiction and denying petition for review in this case.

OPINIONS BELOW

The opinion of the Fifth Judicial Circuit Court for Marion County, Florida is set forth in App.1a - 7a, the

opinion of the Fifth District Court of Appeal of Florida in App.8a-16a, the Supreme Court of Florida's Order is in App.18a-19a, and the Motion for Rehearing denied, Appendix (App.) 17a.

JURISDICTION

The Supreme Court of Florida issued its Order of denial on October 20, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. sections 1254 and 1257.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Fla. Prob. C. Ch. 733.613 states that ...no bona fide purchaser shall be required to examine any proceedings before the order of sale....(App.13a) Fla. Prob. C. Ch. 733.614, left untouched by the appellate Court, states that ...a successor personal representative shall not exercise any power made personal to the personal representative named in the will ....

Amendments V and XIV of the United States Constitution provide that... No state shall deprive any person of life, liberty, or property, without due process of Law. Article VI, paragraph 2, provides that the United States Constitution and the laws of the United States shall be the supreme Law of the Land.

STATEMENT

Petitioner was the Plaintiff in the civil division of the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Marion County (trial court), and Appellee in the Fifth District Court of Appeal of Florida (5DCA). The Respondent was the Defendant in the trial court, and Appellant in the (5D CA).

Petitioner Johnson has been deprived of her 3.75 acre estate, based on the Respondent's contentions to ownership by a conveyance executed in conform-

ance with section 733.613, Florida Statutes (1996). Respondent's attempt to use this statute to estop probate proceedings of a Last Will and Testament with petitioner sole beneficiary violated her due process of law under U.S. Const. Amends 5 and 14. Respondent's use of this statute to justify not having a reasonably diligent search made of the public records before buying the real property at issue here is repugnant to the recording statutes.

Due process normally requires notice and an opportunity to be heard and, thus where any proceeding will finally determine a person's property rights, he is entitled to notice reasonably calculated, under all of the circumstances, to apprise him of pendency of proceeding and opportunity to present his claim or objections.

U.S.C.A.,Const. Amends. 5, 14.

The existing record on appeal will show that Petitioner did not receive notice of certain significant events in a manner conforming to due process.

FEDERAL FREEDOM OF INFORMATION ACT. The recording statutes require recordation of writings that pass or create an interest or right of some kind in land; and the word "interest", within statutes under which recordation of writings passing an interest in land is required, is the broadest term applicable to claims in or on realty, and the quoted word in its ordinary signification is broad enough to include any right, title, or interest in realty. A document is deemed to be filed the day it is received by a public office. Mo. - Moreland v. Paule, App., 659 S.W. 2d 609.

An index is designed as an additional means or facility for enabling persons interested to make a search of public

records and find the object of that search. Respondent had means of knowing about the recording of the Davis Williams' will before closing the sale and purchasing the real property. The will vested twenty per cent (20%) of the property she purchased to petitioner.

The trial court granted judgment of partition and appointment of commissioners for Petitioner, holding that the Probate Division of the Circuit Court determined a twenty per cent (20%) interest in the land for her, and that the statute 733.613 was unconstitutional with respect to the unique case at bar. The seller was authorized to sell the Edward Williams heirs estate. The Davis Williams estate is an undivided twenty per cent (20%) of the Edward Williams estate. The seller sold both estates without notice or joinder offer to petitioner(a divisee entitled to

the Davis Williams estate). This action deprived Petitioner of her U.S.C., Const. Amend. 14 rights.

On appeal, the 5DCA of Florida reversed the trial court and upheld, "inter alia", the statute 733.613. The 5DCA gave no reasoning at all to statute 733.614. Instead of applying the "per se rule of invalidity" with the burden of justification on the state, the Court adopted a "discriminatory approach" under which rest the broad issues, whether the state's interest is legitimate and whether the Court abused its appellate powers in this case. Moreover, citing as precedent Fla. State v. Turner, 224 So. 2d 290 (1969) the Court placed a "heavy burden of persuasion" on Petitioner. Evidence that would have made the precedent case badlaw was withheld from the record on appeal.

On October 20, 1999, The Supreme Court of Florida declined jurisdiction in the case and denied the petition (petitioner's Brief on Jurisdiction). The Court did not entertain a motion for Rehearing, citing Fla. R. App. P. 9.330(d) as the reason.

REASONS FOR GRANTING THE WRIT

The argument for review is simple and substantial. Fl. Prob. C. Ch. 733.613, a statute allegedly considered unconstitutional by the trial Court and was validated, and used by the Fifth District Court of Appeal of Florida (5DCA) to deprive the petitioner of real property vested to her by a will. The testator died October 13, 1995. The will was recorded in public records November, 1995 before the disputed real property was sold by an unauthorized seller. In such circumstances, under this Court's decisions the

constitutional infirmity of the law is plain. Moreover, if undisturbed, the decision of the 5DCA will be taken as precedent for application of a different inheritance clause.

I. The order of the Supreme Court of Florida declining jurisdiction and denying the petitioner's brief on jurisdiction made the appellate Court the state's Court of Last Resort. Therefore this Court should be invoked to protect a person against unjust state laws that deprive him or her of property justly entitled to.

U.S.C., Const. Amend. 14.

II. This is a case of great importance to the citizens of the United States of America. The Last Will and Testament of a person should be carried out as the testator stipulated. It is discrimination when a Law Court gives no scrutiny to a statement in a statute that one person could rely on, and on the other

hand, apply the strictest scrutiny to a statement of the same statute in favor of another person in the same case at bar. The 5DCA passed to an unsupported and insupportable denial of the evident discriminatory use and effect of the statute.

III. The decision of the 5DCA, if permitted to stand, could trigger widespread efforts in the states by heirs-at law and adverse purchasers to lay claim to and seize the property vested to divisees. This gives base to the significance of the misconstruction of the U.S. Constitution by the 5DCA.

CONCLUSION

No person should be deprived of his or her property because an alleged bona fide purchaser was granted a deed to it, by an unauthorized seller, without a notice of defects in the title of the seller, and without notice of another's

claim of right to, or equity in, property prior to his acquisition of title, has paid vendor a valuable consideration. The decision below collides with this Court's decisions and threatens such mischief that review should be granted, with summary reversal an appropriate disposition. This Court might find a basis for a differentiation; certiorari should be granted for plenary review of this question, which would surely be an important one.

Respectfully submitted,

THERESSA RAINS JOHNSON
810 Saint Francis Street
Brooksville, Florida 34601
(352) 796 - 2853
*Pro se of Record

APPENDIX

IN THE CIRCUIT COURT OF THE FIFTH
JUDICIAL CIRCUIT IN AND FOR
MARION COUNTY,FLORIDA.
CASE NO: 96-3992-CA-B

THERESSA RAINS JOHNSON, individually
and as Personal Representative
of the Estate of
Davis Williams, deceased,

Plaintiff,

vs.

ANN W. ANDERSON,

Defendant.
_____/

JUDGMENT OF PARTITION and
APPOINTMENT OF COMMISSIONERS

THIS ACTION for partition of real property pursuant to Chapter 64 of the Florida Statutes came to be heard before this Court. After considering the testimony and evidence, and reviewing the closing memoranda filed by the parties, the Court finds as follows:

1. The Plaintiff has standing to bring this suit for partition as the sole beneficiary of the Last Will and Testament of Davis Williams, deceased,

admitted to probate, In Re: the Estate of Davis Williams on the 8th day of August, 1996. By its order of February 4, 1997, in case number 2509-CP, the probate court determined that the Plaintiff was a fee simple title owner in the subject property.

2. The Plaintiff owns an undivided twenty percent (20%) interest and the Defendant, Ann W. Anderson, owns an undivided eighty percent (80%) interest in the real property at issue, located in Marion County, Florida, more particularly described as:

> East 1/2 of the SE 1/4 of the NE 1/4 of Section 34, Township 16 South, Range 22 East, EXCEPT road right of way. Parcel Number: 3730-000-00.

3. The testimony presented by the Defendant establishes that she obtained title to her interest in the subject property on June 28, 1996, pursuant to a Warranty Deed from Burt Coleman, as the Duly qualified Successor Personal

Representative of the Estate of Edward Williams. The Court recognizes that section 733.613, Fla. Stat.,states that "(n)o bona fide purchaser shall be required to examine any proceedings before the order of sale." However, the Court finds that the statute is unconstitutional as it applies to the unique facts and circumstances of this case. The Personal Representative, with a little effort and diligence, could have easily ascertained and notified the Plaintiff as an identifiable owner of an interest in the property prior to the sale to the Defendant. Further, the probate court in case number 2509-CP found that Bert Coleman, as Successor Personal Representative, was not authorized to sell the interest of the Plaintiff in and to the subject property.

Further, the closing agent (title

insurer insuring the title of the purchaser) was or should have been on notice of the Plaintiff's interest in the subject property. The evidence establishes that the Personal Representative furnished, to the closing agent prior to dispersal of the proceeds from the sale, a list of the names and addresses of the heirs/devisees who would receive a portion of the proceeds. Such action was completed prior to or simultaneous with the recording of the warranty deed and prior to the issuance of the title policy insuring Defendant's title as purchaser. Therefore, the law provides that the title company as closing agent acted with actual or imputed knowledge of the Plaintiff's interest in the property.

4. The Defendant and her husband testified that the property is unique in its configuration having a spring on the

southern end with running water leading to a pond and unique trees. Further, in reliance on this purchase, they acquired another 7.5 acres north of and contiguous to the subject property. Therefore, they allege that the property cannot be partitioned without great prejudice to them. However, the Plaintiff maintains that the property is divisible without prejudice to either party. Based on the conflicting claims, the Court finds that pursuant to section 64.061, Fla. Stat., commissioners will have to be appointed to make the partition or make a determination that partition cannot be made without prejudice to the owners. Accordingly, it is hereby:

ORDERED AND ADJUDGED:

1. Plaintiff, Theressa Rains Johnson, owns an undivided twenty percent (20%) undivided interest and Defendant, Ann W. Johnson, owns an undivided eighty percent (80%) interest as tenants in

common in the real property in Marion County, Florida described as:

> East 1/2 of the SE 1/4 of the NE 1/4 of Section 34, Township 16 South, Range 22 East, EXCEPT road right of way. Parcel Number: 3730-000-00.

2. As conflicting testimony exists as to whether the property is divisible, commissioners shall be appointed pursuant to section 64.061, Fla. Stat., to make the partition or make a finding to the Court that the property is indivisible.

3. Within fifteen (15) days of the date of this order, the parties shall submit three agreed upon names to the Court for appointment as commissioners. If the parties are unable to agree upon commissioners, they shall each submit three names to the Court. Upon receipt of the names, the Court shall appoint the commissioners to serve under the terms and conditions as established by subsequent order of the court.

4. Based upon the foregoing findings of fact and law, Defendant's Counterclaim for quiet title is denied.

5. The Court reserves jurisdiction as to the issue of attorney's fees and costs.

DONE AND ORDERED, in chambers in Ocala, Marion County, Florida, this 21 day of May, 1998.

" /S/ William T. Swigert "
WILLIAM T. SWIGERT
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by U.S. Mail and by fax this 21 day of May, 1998 to the following:

RALPH V. HADLEY, III, ESQ.
Post Office Box 1961
Winter Park, Fl 32790-1961

THERESSA RAINS JOHNSON
810 Saint Francis Street
Brooksville, Fl 34601

"/S/ Susan Rowe Keith "
Staff Attorney(352)620-3567

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA FIFTH DISTRICT
JANUARY TERM 1999

ANN W. ANDERSON,

Appellant,

v.

THERESSA RAINS JOHNSON, ETC.,

Appellee.

Not Final Until The Time Expires To File Rehearing Motion And If Filed, Disposed Of.

Case No. 98-1781

Opinion filed April 23, 1999

Appeal from the Circuit Court
for Marion County,
William T. Swigert, Judge.

Ralph V. Hadley,III of Swann, Hadley and Alvarez, P.A., Winter Park, for Appellant.

Theressa Rains Johnson,
Brooksville, Pro se.

COBB, J.

Ann Anderson (Anderson) appeals from an adverse judgment of partition. She contends that she is the rightful owner of the real property in question pursuant to a conveyance executed in confor-

mance with section 733.613, Florida Statutes (1996).

The real property in question was originally owned by Edward Williams who died in 1960 and was survived by several children, including Davis Williams. Probate proceedings were begun but the Edward Williams estate was closed without a final disposition of the real property. In October, 1995, Davis Williams died testate, survived only by his stepdaughter, Theressa Johnson (Johnson). In November, 1995, Davis Williams' will, naming only Johnson, was filed with the clerk of the circuit court for safekeeping though no petition to admit the will to probate was filed at the time. In early 1996, Bert Coleman, on behalf of Edward Williams' heirs, entered into a contract to sell the property to Anderson. In March, 1996. Johnson advised Coleman that she wanted her interest in the land

as a home site.

Coleman thereafter petitioned the probate court to reopen the Edward Williams estate for a determination of heirs and appointment of successor personal representative. No notice of the petition was provided to Johnson. The probate court, by order dated June 5, 1996, reopened the estate, appointed Coleman as successor personal representative and determined the heirs of Edward Williams. Johnson was not listed as an heir. The court also authorized the sale of the property to Anderson. Anderson took title to the property on June 28, 1996, pursuant to a deed from Coleman. The closing agent, pursuant to a directive from Coleman, sent a check to Johnson for her interest. Johnson rejected the check. In August, 1996, Johnson filed a petition to admit Davis Williams' will to probate and to amend the order deter-

mining heirs and authorizing sale. Anderson was not afforded notice of this action. By order dated February 4,1997, the probate court ruled that Coleman was not authorized to sell the estate of Davis Williams' interest in the property and ruled that the conveyance to Anderson did not include said interest.

Johnson meanwhile sued Anderson for partition. Anderson counterclaimed to quiet title to the property. Following a non-jury trial, the court entered the order being appealed, ruling that Johnson owned an undivided 20% interest in the property. The court further explained:

> The Court recognizes that section 733.613, Fla. Stat., states that "(n)o bona fide purchaser shall be required to examine any proceedings before the order of sale." However, the Court finds that the statute is unconstitutional as it applies to the unique

> facts and circumstances of this case. The Personal Representative, with a little effort and diligence, could have easily ascertained and notified the Plaintiff as an identifiable owner of an interest in the property prior to the sale to the Defendant. Further, the probate court in case number 2509-CP found that Bert Coleman, as Successor Personal Representative, was not authorized to sell the interest of the Plaintiff in and to the subject property.

The court appointed commissioners "to make partition or make a finding to the Court that the property is indivisible." The court denied Anderson's counterclaim.

Section 733.613 provides in relevant part:

> (1) When a personal representative of a decedent dying intestate, or whose testator has not conferred upon him a power of sale or whose testator has granted a power of sale but his power is so limited by the will or by operation of law that it cannot be conveniently exercised,

> shall consider that it is for the best interest of the estate and of those interested in it that real property be sold, the personal representative may sell it at public or private sale. No title shall pass until the sale is authorized or confirmed by the court. Petition for authorization or confirmation of sale shall set forth the reasons for this sale, a description of the property sold or to be sold, and the price and terms of the sale. Except when interested persons have joined in the petition for sale of real property or have consented to the sale, notice of the petition shall be given . No bona fide purchaser shall be required to examine any proceedings before the order of sale. (Emphasis added).

Anderson correctly points out that the issue of the constitutionality of section 733.613 was never raised in the pleadings. The order does not reflect which particular provision(s) of the constitution is implicated. Under these circumstances, the trial court erred in finding the statute to be unconstitutional. See

State v. Turner, 224 So. 2d 290 (Fla. 1969).

Further, the evidence below was that Anderson had no knowledge of Johnson's existence or her claim. Johnson's response is that while Anderson may have lacked actual notice, she had constructive notice due to the filing of the will with the clerk of the court. But constructive notice of what? The closing agent testified that she knew at the time of the closing about Johnson's claim to a 20% interest in the subject property based upon the will. The closing agent, however, was instructed by Coleman to cut checks to each of the co-owners so the agent sent Johnson a check for her 20% interest out of the sale proceeds, a check which Johnson rejected.

Thus while the closing agent knew of Johnson's interest in the subject pro-

perty, Coleman, who had court authorization to sell the property, directed checks be written to each of the heirs. Coleman may be guilty of negligence or perhaps an outright misrepresentation in informing the probate court that all the heirs had consented to the sale. However, Anderson was in no way at fault here since her only notice of Johnson's interest would have been constructive notice (the recording of the will) which in itself in no way indicated to Anderson (or to the closing agent for that matter) that Johnson refused to authorize the sale of her interest in the property. Indeed, Coleman represented that the heirs had authorized the sale and the June 6, 1996 order of the probate court accordingly gave Coleman authority to sell the property to Anderson. Anderson had every right to rely on that order

unless and until it was set aside. See section 733.613, Fla. Stat. It was not set aside (partially, as to Johnson's interest) until February 4, 1997, after the sale. Anderson took title pursuant to a probate court order which by statute she was entitled to rely upon.

The partition order is reversed.

REVERSED.

GOSHORN and ANTOON, JJ.,concur.

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA FIFTH DISTRICT

ANN W. ANDERSON,
Appellant,

v. CASE NO. 98-1781

THERESSA RAINS JOHNSON,
etc., Appellee.

DATE: May 20, 1999

BY ORDER OF THE COURT:

ORDERED that Appellee's Motion For Rehearing, filed May 3, 1999, is denied.

I hereby certify that the foregoing is (a true copy of) the original Court order.
DISTRICT COURT OF APPEAL
" /S/ Frank J. Habershaw, "
FIFTH DISTRICT STATE OF FLORIDA
FRANK J. HABERSHAW, CLERK

cc: Ralph Hadley, III, Esq.
Theressa Rains Johnson

SUPREME COURT OF FLORIDA

WEDNESDAY, OCTOBER 20, 1999

THERESSA RAINS JOHNSON, *
*
Petitioner, *
*
vs. *
*
*
ANN W. ANDERSON, *
*
Respondent. *

****

CASE NO. 95,867

District Court of Appeal,
5th District - No. 98-1781

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be

entertained by the Court. See Fla. R. App. P. 9.330(d).

SHAW, WELLS, ANSTEAD, PARIENTE and QUINCE, JJ.,concur.

A True Copy P REME COURT OF THE
TEST: U SAT CITO SI RECTE
S
"/S/ Debbie Causseaux"
STATE OF FLORIDA

Debbie Causseaux
Acting Clerk,
Supreme Court

BH

cc: Hon.Frank J. Habershaw,Clerk
Hon.David R. Ellspermann,Clerk
Hon.William T. Swigert,Judge

Mr. Ralph V. Hadley,III
Ms. Theressa Johnson